

**IN THE UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF MISSOURI  
CENTRAL DIVISION**

**SEAN O. CASEY and  
WILLIAM J. WONG,**

**Plaintiffs,**

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**MISSOURI DIRECTOR OF REVENUE and  
MISSOURI STATE BOARD OF  
REGISTRATION FOR THE HEALING ARTS,**

**Defendants.**

**Case No. 04-4180-CV-C-RED**

**ORDER, PERMANENT INJUNCTION, AND JUDGMENT**

On August 11, 2004, Plaintiffs filed their Complaint for Declaratory Judgment, Preliminary Injunction, and Permanent Injunction (the "Complaint"). On that same day, the Court held a telephone conference in the case, and the Court issued its Preliminary Injunction against Defendant Missouri State Board of Registration for the Healing Arts (the "Board"). (Doc 4.)

Before the Court now is Plaintiffs' motion for a permanent injunction, as well as Plaintiffs' request for declaratory relief. The parties entered into a Joint Stipulation of Facts (Doc. 6), and the Court hereby accepts the Joint Stipulation of Facts and incorporates the Joint Stipulation of Facts into this Order and Judgment.

In their Complaint, Plaintiffs seek a declaratory judgment from this Court that section 324.010, RSMo., is unconstitutional. In particular, Plaintiffs assert that the statute (and the manner in which it is applied) violates Plaintiffs' due process rights and their equal protection rights. In addition, Plaintiffs claim that the statute is void for vagueness and that it is unconstitutionally retrospective.

"While federal courts are obliged to decide constitutional questions when necessary to the resolution of a dispute before them, 'they have an equally strong duty to avoid constitutional issues that need not be resolved in order to determine the rights of the parties to the case under consideration.'" United States v. Turechek, 138 F.3d 1226, 1229 (quoting County Court v. Allen, 442 U.S. 140, 154, 99 S. Ct. 2213, 2223 (1979)). Because the Court disposes of this case on other grounds, the Court does not find it necessary to reach the constitutional arguments raised by Plaintiffs in Counts I, II, III, and VIII of their Complaint.

Based on the Joint Stipulation of Facts, the Court determines that any purported revocation of Plaintiffs' medical licenses effected by actions of the Director and the Board was null, void ab initio, and of no effect; that Plaintiffs' medical licenses were not revoked automatically or by operation of law; and as such, that Plaintiffs' medical licenses have not, in fact, been revoked either by actions of the Director, by the Board, or by operation of law. The Court further determines that Plaintiffs were not delinquent on any Missouri taxes and did not fail to file state income tax returns in the pertinent time period; that, as such, there was no factual basis to trigger a revocation of Plaintiffs' medical licenses; and that, therefore, no revocation in fact occurred. Accordingly, the Court rules for Plaintiffs and against Defendants on Count IV of the Complaint.

The Court also determines, based on the Joint Stipulation of Facts, that the Director lacks the statutory authority to revoke a license issued by the Board; that the Director's "Certification of Non-Compliance" did not effect revocation of Plaintiff's licenses; and that any purported revocation effected pursuant thereto was null, void, and of no effect. Because the Court rules that the "Certification of Non-Compliance" did not effect revocation, the Court rules for Plaintiffs and against the Director on

Count V of the Complaint, to the extent set forth above.

Because there was no revocation of Plaintiffs' licenses, the Board has no authority or power to report the purported revocation under section 1128e of the Social Security Act, codified at 42 U.S.C. § 1320a-7e. That section requires the Board to report any "final adverse action" which the Board has taken against a health care provider. There is no revocation and, thus, no final adverse action. As such, the Court rules that the Board has no authority to report the purported revocation to the Healthcare Integrity and Protection Data Bank (the "HIPDB"), the National Practitioner Data Bank (the "NPDB"), and/or to the Federation of State Medical Boards of the United States, Inc. (the "Federation"). To the extent that any such report has been made, the Board must take any and all necessary action to remove, to rescind, or to "un-do" the erroneous report. Therefore, the Court rules for Plaintiffs on Count VII of their Complaint.

The standards for determining whether a permanent injunction should issue are essentially the same as the standards for a preliminary injunction, except that the Court is to determine the merits rather than a plaintiff's likelihood of success on the merits. The Court, in its Preliminary Injunction, has previously determined that Plaintiffs would suffer irreparable harm, that there was no real harm to the general public, and that the balance of harm to the Plaintiffs was greater than the harm to the Board. Because the Court has now determined that Plaintiffs should succeed against the Board on the merits as well, Plaintiffs are entitled to a permanent injunction against the Board. Thus, the Court hereby grants Plaintiffs' motion for a permanent injunction against the Board, as requested in Count X of the Complaint, but only in respect to the named Plaintiffs Casey and Wong.

Although Plaintiffs sought injunctive relief from the Director in their Complaint, Plaintiffs have

elected not to pursue injunctive relief from the Director in this case. As such, the claims for injunctive relief against the Director are dismissed without prejudice.

*The Court hereby dismisses Counts VI and IX of the Complaint without prejudice as well. The Court dismisses Count VI because it does not reach the issue of whether a hearing is required before the Board or the Administrative Hearing Commission. The Court dismisses Count IX because Plaintiffs have chosen not to pursue a claim under section 1983 or under section 1988.*

Accordingly, for good cause shown, it is hereby:

ORDERED that any revocations or purported revocations pursuant to section 324.010, RSMo., of Plaintiffs' medical licenses effected by the Director's "Certification of Non-Compliance" (Joint Stipulation of Facts, Exh. 1 and 2) and by the Board in its letters to Plaintiffs dated June 29, 2004 (Joint Stipulation of Facts, Exh. 3 and 4), are null, void ab initio, and of no effect; it is further

ORDERED that Plaintiffs' medical licenses and the licenses of any other similarly situated physicians and licensees (i.e., other physicians and licensees whose licenses were revoked or purportedly revoked pursuant to section 324.010, RSMo., but who were not delinquent on any state taxes nor required to file for the tax years 2000, 2001, and 2002) were not in fact revoked by operation of law, whether upon issue of certification or letter by the Director or Board; it is further

ORDERED that the medical licenses of Plaintiffs and the licenses of any other similarly situated physicians and licensees have not been revoked, and that Plaintiffs and other similarly situated physicians and licensees may report or may answer on any applications, renewal applications, questionnaires, insurance forms, and other documents that as the date of this order their licenses have never been revoked in Missouri under section 324.010, RSMo.; it is further

ORDERED that the Board take any and all necessary steps or actions to correct, to rescind, to vacate, and/or to expunge any reports that they may have issued to any person or entity, including to the Federation, which indicated that Plaintiffs' licenses or the licenses of any other similarly situated physicians and Board licensees had been revoked pursuant to section 324.010, RSMo. The Board is further directed to make every effort to ensure that no statement exists that Plaintiffs' licenses and the licenses of any similarly situated physicians and licensees have been or were revoked pursuant to section 324.010, RSMo.; it is further

ORDERED that the Board is directed, in the event of any inquiry (whether verbally, in writing, or in person) from any person or entity, to respond that as the date of this order the medical licenses of Plaintiffs and any other similarly situated physicians and licensees in the State of Missouri have never been revoked and, if necessary, to respond that any previous reporting of a revocation of Plaintiffs' licenses and the licenses of any similarly situated physician and licensee was erroneous, inaccurate, and/or incorrect; it is further

ORDERED that the Board is directed to pull, remove, destroy, and/or expunge any record or reference in the files pertaining to Plaintiffs' licenses and the licenses of any similarly situated physicians and licensees, or in any other files, which states or suggests that Plaintiffs' medical licenses and the licenses of other similarly situated physicians and licensees were or have been revoked pursuant to section 324.010, RSMo.; it is further

ORDERED that the Board is directed to make an affirmative statement in writing and/or on its Internet website posting the content of this Order and Judgment; it is further

ORDERED that the Board is directed to send a notice in writing to the *Healthcare Integrity* and

Protection Data Bank, to the National Practitioner Data Bank, and to the Federation of State Medical Boards of the United States, Inc., stating that as the date of this order any purported revocation of Plaintiffs' licenses and the licenses of other similarly situated physicians and licensees under section 324.010, RSMo., is null, void, and of no effect, and including a copy of this Order and Judgment; it is further

ORDERED that the Board is directed to include the names of Plaintiffs and any other similarly situated physicians and licensees on its website, indicating that as the date of this order Plaintiffs and any other similarly situated physicians and licensees have not been revoked pursuant to section 324.010, RSMo., and indicating that Plaintiffs Casey and Wong are in good standing with the Board; it is further

ORDERED that Plaintiffs' request for a permanent injunction is hereby GRANTED as to Defendant Missouri State Board of Registration for the Healing Arts, but only in respect to the named Plaintiffs Casey and Wong; it is further

ORDERED that Defendant Missouri State Board of Registration for the Healing Arts is permanently enjoined and prevented from reporting the purported revocation of Plaintiffs' medical licenses to the Healthcare Integrity and Protection Data Bank, to the National Practitioner Data Bank, to the Federation of State Medical Boards of the United States, Inc., to any other state licensing agency, or to any other person, entity, or agency, without the specific authorization of Plaintiffs; it is further

ORDERED that by agreement of the parties, Plaintiffs waive and release the Board, and the Director, their members and any of their employees, agents, or attorneys, including any former Board members, employees, agents, and attorneys, of, or from, any liability, claim, actions, causes of action,

fees, costs and expenses, and compensation, including, but not limited to any claims for attorneys fees and expenses, including any claims pursuant to section 536.087, RSMo., or any claim arising under 42 U.S.C. §§ 1983 and 1988, which may be based upon, arise out of, or relate to any of the matters raised in this litigation, or from the negotiation or execution of this agreement. The parties acknowledge that this paragraph is severable from the remaining portions of this agreement in that it survives in perpetuity even in the event that any court of law deems this agreement or any portion thereof void or unenforceable; it is further

ORDERED that Plaintiffs' request for a declaratory judgment against Defendants on Count IV of the Complaint is hereby GRANTED; it is further

ORDERED that Plaintiffs' request for a declaratory judgment against the Board on Counts VII and X of the Complaint is hereby GRANTED; it is further

ORDERED that Plaintiffs' request for a declaratory judgment against the Director on Count V of the Complaint is hereby GRANTED, to the extent set forth above; it is further

ORDERED that Counts VI and IX are dismissed without prejudice; it is further

ORDERED that Plaintiffs' request for injunctive relief against the Director in Count X is dismissed without prejudice; and it is further

ORDERED that Plaintiffs shall be returned their cash bond or security in the amount of \$1,000.00 which Plaintiffs posted or filed with the Court pursuant to the Preliminary Injunction.

DATE: September 2, 2004

/s/ Richard E. Dorr

RICHARD E. DORR, JUDGE  
UNITED STATES DISTRICT COURT